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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/217,469	12/21/1998	MIKHAIL ZAYDMAN		8318

7590 07/10/2002

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EXAMINER

HOANG, TU BA

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 07/10/2002

20

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/217,469

Applicant(s)

ZAYDMAN, MIKHAIL

Examiner

Tu Ba Hoang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 04 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 26-29 and 31-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 26-29, and 31-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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Reissue Applications**Response to Amendment**

Applicant's arguments filed February 04, 2001 have been fully considered but they are not persuasive as for the following reasons:

Claims Rejections under 35 USC § 251: claims 26-28 are rejected under 35 U.S.C. 251 as being improperly introduced new matter in a reissue application. It is noted the original specification does not provide any support for the recitation of "each of said plurality of rods rotates **one complete revolution every time said first and second rotatable discs rotate one complete revolution**" as recited in claim 26.

It is further noted that while the specification has indicated that each of the rods can be rotated as the first and second discs rotated and Figure 14A (of the drawings from the printed patent) shows there are flywheels 44. As the Examiner has indicated in the previous Office Action, the number of complete revolutions that the rod rotated also can be dependent from the size (i.e., diameter) of the rod itself, the disc at which such rod is connected and perhaps the fly wheel connected to the rod. For instant, with a larger disc and heavier fly wheels (or different in sizes or shapes), as the disc rotates one complete revolution, the rod that rotatable connected to such disc can rotate more than one complete revolution in which such revolutions are caused by the weight or size or shape of the fly wheel as well as the size of the rod and the disc (i.e., if the diameter of the rod can be much smaller than of the disc). The examiner agrees that as the disc rotated the rod also rotated. However, the number of revolution cannot be determined without the condition of at least the rod and disc dimensions (i.e., size and diameter) or the type of flywheel (i.e., size or shape). For a particular type of such flywheel, the gravity may force such flywheel to point downward thereby turning the flywheel, however, since the specification as its original filing has never provided any details or supports for such flywheel or dimension for the rod or disc in order to merely provide such recitation of "each of said plurality of rods rotates **one complete revolution every time said first and second rotatable discs rotate one complete revolution**" in claim 26 and as Applicant has admitted in his argument (in the remarks filed 02/04/02), "even though the original specification does not include the above recitation", this is clearly new matter.

Moreover, applicant's argument that "each of said plurality of rods rotates **one complete revolution every time said first and second rotatable discs rotate one complete revolution**" based on the law of gravity acting on the flywheel. Thus such recitation of the flywheel in order to provide a complete revolution every time the disc rotated one complete revolution is considered essential but such feature upon which applicant relies (i.e., the flywheel) are not recited in the rejected claim 26. Although the claims are interpreted in light of the specification, limitations from the specification are

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not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Such argument is considered irrelevant.

It is further noted that Figure 14A of the drawings filed on December 21, 1998 did not include the flywheel 44.

Since there have been amendments to the claim, in accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Claims 1-14, 26-29, and 31-35 are further rejected as being based upon a defective reissue oath/declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tu Ba Hoang whose telephone number is (703)308-3303. The examiner can normally be reached on Mon-Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg can be reached on (703) 308-1327. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3463 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

tbh
July 8, 2002


Tu Ba Hoang
Primary Examiner